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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	86263642
Applicant	Yahya Kemal Gungor
Applied for Mark	MERSIN
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of: Yahya Kemal Gungor

Serial Number: 86263642

Filing Date: April 25, 2014

Mark:



Law Office: 113

Examining Attorney: Seth Dennis

APPLICANT'S APPEAL BRIEF

The present Appeal Brief is submitted in support of the Notice to Appeal filed electronically on October 10, 2015. A Request for Reconsideration was concurrently filed with the Notice to Appeal. The Request for Reconsideration was denied by a communication mailed October 29, 2015. A communication mailed October 30, 2015 from the Trademark Trial and Appeal Board (TTAB) indicated the deadline for filing the present Appeal Brief is sixty days from the mailing thereof, i.e., December 29, 2015.

Appellant and owner of refused mark is Yahya Kemal Gungor for Application serial No.86263642 and hereby submits his Appeal Brief.

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I. PROCEDURAL HISTORY

Applicant filed its trademark application on April 29, 2014 and this application was assigned to examining attorney Seth Dennis, on August 7, 2014. On August 15, 2014, Examiner Dennis sent the First Notification of Non-Final Office Action and the Appellant responded on February 5, 2015. On February 15, 2015, Examiner Dennis sent the Second Notification of Non-Final Office action to the Appellant and the Appellant responded on March 31, 2015. On April 10, 2015, Examiner Dennis sent a Final Notification of Office Action indicating that all three factors of the primarily geographical test were met and that “**MERSIN**” was primarily geographically descriptive. On September 17, 2015, Appellant filed a Request for Reconsideration and Examiner Dennis sent a reconsideration letter on October 08, 2015. On October 10, 2015 Appellant filed a Request for Reconsideration in conjunction with its notice of appeal. On October 29, 2015 that Request for Reconsideration was denied. Appellant now seeks review of the record and requests that the Examiner Dennis be overturned and Appellant granted registered trademark protection from the United States Patent and Trademark Office.

II. THE EXAMINING ATTORNEY’S EVIDENTIARY RECORD

A. In denial of the Request for Reconsideration, the Examining Attorney attached the following evidence:

1. Sixty-nine exhibits (*Exhibit nos. 1-69*) of articles from what appears to be from Lexis Nexis’ database of Combined News and Business Sources that reference Mersin, Tukey. The attached articles span a period of nine years from 2006 to present. Some of these articles appeared in small publications such as The Olympian and The Sacramento Bee. None of these articles go beyond a passing mention of Mersin, Turkey. In fact, most of these exhibits are restaurant reviews that highlight the food and make only reference Mersin, Turkey as the birthplace of the owner. This evidence is not probative and there is no reason to

believe these articles were written to spotlight Mersin, Turkey. There is no proof that these restaurant reviews from the past nine years have caused a sufficient number of U.S. consumers to make a geographic connection between the applied-for mark and Mersin Turkey.

2. Two exhibits (*Exhibit nos. 70-71*) are client reviews from a travel website. These short reviews talk about people trips to Turkey and some of the various day excursions a travel can make by car. The only mention of Mersin is small and does not even reference any reason to have an extended stay in Mersin. This evidence is not probative and should be excluded, as there is no reason to believe that the average American dairy and pastry consumer would confuse the dairy and pastry products with Mersin, Turkey after reading this minute travel review.

3. Thirteen exhibits (*Exhibit nos. 72-85*) are an Internet story about a Mersin Merchant. This story is only directly accessible if the person types in the search engine “Mersin Merchant”. This article would not ordinarily be found unless someone was specifically directed to search for it. This evidence is not probative and should be excluded as there is no reason to believe this article is viewed by a large number of people using the internet on a daily basis.

4. Three exhibits (*Exhibit nos. 86-88*) are a blog from a resident of Mersin. This Blog does not make significant statement about Mersin and seems to primarily focus on her specialized line of clothing and how she spends her free time with her children. This evidence is not probative and should be excluded, as there is no reason to believe that large number of America consumers of dairy and pastry products would be following this particular Blog or even know of its existence.

5. Eleven exhibits (*Exhibit nos. 89-99*) are printouts from a European travel site advertng many cities in Turkey including more popular tourist destinations on the Turkey’s Eastern Mediterranean Coast. This evidence is not probative and

should be excluded, as there is no reason to believe that a large number of American dairy and pastry consumers would be reviewing this web-site or know if tis existence.

B. In denial of Registration in the Final Office Action, the Examining Attorney attached the following evidence:

1. Six exhibits (*Exhibit nos. 1-6*) are screenshots of the various products sold by the Applicant. This evidence is not probative and should be excluded, as there is are no markings on these screenshots identifying Mersin, Turkey. If anything the association of Mersin with goods and not the geographic location go to support Applicant's claims that Mersin is not associated with the place, but with applicant's products.

2. Five exhibits (*Exhibit nos. 7-12*) are screenshots from Wikipedia which were previously provided on the Denial of the Request for Second Office Action. Review the analysis provided below in Section C(2).

3. One exhibit (*Exhibit no. 13*) is a screenshot which was produced after the denial of the First Request for Office Action. Review analysis provided in Section D(1).

4. On exhibit (*Exhibit no. 14*) is a screenshot from The Columbia Gazetteer of the World and it provides some basic demographic information about Mersin Turkey. This evidence is not probative and should be excluded, as the information contained on this screenshot has no reference point of comparison. The average American consumer of dairy and pastry products has no relation to this site and would not be influenced by this site to purchase product. Further, just because a place is in the Columbia Gazetteer does not make it known.

5. One exhibit (*Exhibit no. 15*) is a screenshot from Wikipedia showing a listing of cities in Turkey.

6. Thirteen exhibits (*Exhibit nos. 16-28*) are various screenshots of the Map of Turkey. This evidence is not probative and should be excluded, as these maps do not demonstrate how the average American consumer of dairy and pastry products would confuse Mersin food products with the city of Mersin.

7. Three exhibits (*Exhibit: 29-32*) are screenshots from Amazon.com purporting to be a travel book for those interested in travelling to Turkey. This evidence is not probative and should be excluded, because it does not highlight or focus on the City of Mersin. The average American consumer of dairy and pastry products would not read this book or review this web page and believe that Mersin products come from the City of Mersin and therefore there is no possibility of confusion between Mersin products and Mersin, Turkey.

8. One exhibit (*Exhibit no. 33*) is an article which appears in The Daily News regarding the hopes of tourism to Mersin. This evidence is not probative and should be excluded, because the article even claims that this publication's audience is for people living in the region of the Middle East and the Mediterranean Sea. The average American consumer of dairy and pastry products would not be actively looking at or reading this publication and therefore there is no possibility of confusion between Mersin products and Mersin, Turkey.

9. On exhibit (*Exhibit no. 34*) is a screen shot from an Italian web site claiming that there is a growing number of Arab tourists choosing to vacation in Mersin, Turkey. This evidence is not probative and should be excluded, because the article even claims that this publication's audience most

likely for Italians. The average American consumer of dairy and pastry products would not be actively look and reading this publication and therefore there is no possibility of confusion between Mersin products and Mersin, Turkey.

10. Three exhibits (*Exhibit nos. 34-36*) are screenshots purporting to show a food and packaging trade show in Mersin. This evidence is not probative and should be excluded, because it does not single out dairy and pastry products and instead focuses mainly on Mersin's citrus production, which has nothing to do with applicant's goods. Instead this tradeshow is open to food related companies. As such, the average American consumer of dairy and pastry products would not assume that Mersin Products come from Mersin because Mersin is an obscure and remote geographic location and therefore there can be no possibility of confusion between Mersin products and Mersin, Turkey.

11. Two exhibits (*Exhibit nos. 37-38*) are screenshots from the web-site Trip Advisor highlighting some hotels in Mersin and some local restaurants. This evidence is not probative and should be excluded, because it fails to make any connection to Mersin the company. The average American consumer of dairy and pastry products would not assume that Mersin Products come from Mersin after looking at this web-site and therefore there is no possibility of confusion between Mersin products and Mersin, Turkey.

12. Thirteen exhibits (*Exhibit nos. 39-52*) are copies from a 2013 prepared by Deloitte for the Government of Turkey highlighting Travel and Tourism. This evidence is not probative and should be excluded, because the audience of this report was the government of Turkey and not the average American dairy and pastry consumer. Mersin itself is only ever mentioned in passing on a few maps and not discussed at length. There is no possibility after reading this report that a person could become aware of the geographic location of Mersin Turkey.

13. Two exhibits (*Exhibit nos. 53-54*) are screenshots from Wikitravel describing Mersin and how to get there from the more popular destinations in Turkey. This evidence is not probative and should be excluded, because there is no content on the web page that shows how Mersin is known, if anything it shows how Mersin is usually a secondary or tertiary obscure travel destination that travelers are unaware of and need guidance on how to go to and from.

14. One Exhibit (*Exhibit no. 55*) is a blog from an individual that lives in Mersin, Turkey. This evidence is not probative and should be excluded, because there is no content in the blog that would show that American Dairy and pastry consumers frequented the website, or are aware of the city of Mersin, Turkey.

15. Six Exhibits (*Exhibit nos. 56-61*) appear to be screenshots from the website regarding living abroad in Turkey. The website primarily focuses on Istanbul and what to expect as far as living arrangements and the variations of Turkish food. This evidence is not probative and should be excluded, because there is no content in the website that shows that American Dairy and pastry consumers frequented the website, or are aware of the city of Mersin, Turkey; if anything this website shows how well known Istanbul is and how Mersin is an obscure and little known location.

16. Five exhibits (*Exhibits nos. 62-68*) are various Turkish food recipes that have absolutely nothing to do with Mersin goods. This evidence is not probative and should be excluded, because there is no connection between the recipes and the geographic location of Mersin, Turkey other than the passing reference to the fact that the food in the recipe is consumed in Mersin and various other locations listed in the exhibit. There is no connection of the recipes to the geographic location such that the average dairy and pastry consumer would look at the website and form an association of the goods with the geographic location of

Mersin, Turkey. Therefore, there is no possibility that the average American dairy and pastry consumer would confuse Mersin Products with Mersin, Turkey after reviewing these recipes on this web-site.

17. One exhibit (*Exhibit no. 69*) is a screenshot from a Turkish travel we-site that provides some factual information regarding the city of Mersin

18. Twenty-two exhibits (*Exhibit nos. 70-91*) are printouts from a Lexis Nexis Web search for “Mersin”. Among the list of articles, Mersin is overwhelming referenced only tangentially, and only in the title 5 out of 203 times. The majority of the posts focus on either sports teams, a nuclear power plant built by the Russian in Akkuyu, or Mersin as a place occupied by European powers during Turkey’s war for independence. This evidence is not probative and should be excluded, because this evidence fails to establish that the average American dairy and pastry consumer has seen these articles. The average American dairy and pastry consumer likely cannot name the Turkish sports leagues or even know of their existence. Similarly, those consumers likely have no knowledge of Turkish Nuclear power plans, and cannot name the year of Turkish Independence let alone cities that may have been involved in such a struggle. Therefore, there is no possibility of the average consumer making a geographic association since Mersin is such an obscure city.

19. Two exhibits (*Exhibit nos. 92-93*) are screen shots from a web-site purporting the largest cities in the world by population. This evidence is probative because Mersin, Turkey does not even make the top one hundred most populous cities in the world. The average American Dairy and pastry consumer has never heard of Mersin, Turkey and most likely a tremendous amount of cities that did make the top 100 list for population. This proves there is no possibility of the average consumer making a geographic association with Mersin Turkey since

Mersin is such an obscure and remote city unknown to the American Dairy purchasing public.

20. Two exhibits (*Exhibit nos. 94-95*) are screenshots of from Wikipedia highlighting the population of cities in the United States. This evidence is not probative and should be excluded, because comparing cities in the United States and Turkey is like comparing apples and oranges. The examiner is hoping to argue that the cities of equal size are equally known and that is simply not true. The fact that Mersin's products come from a city the size of Detroit, Michigan does not mean that Mersin, Turkey is as well-known as Detroit, Michigan. Mersin's size alone cannot make it a non-obscure and remote location.

21. One exhibit (*Exhibit no. 96*) is a screenshot of the population of India. This evidence is not probative and should be excluded, because India has no relation to Mersin products or Mersin, Turkey.

C. In denial of the Request for Second Office Action, the Examining Attorney attached the following evidence:

1. One Exhibit (*Exhibit no. 1*) is same screenshot that was produced in the denial of the First Office Action. Review the analysis below.

2. Five exhibits (*Exhibit nos. 2-5*) are screenshots from the Wikipedia web site for the city of Mersin, Turkey. This evidence is not probative and should be excluded, as it does not demonstrate how the American dairy and pastry consumer would confuse the Mersin brand of dairy and pastry products with the city Mersin. Also, there is nothing on these pages that would direct a viewer of the page to believe that Mersin dairy and pastry products actually originate from the city of Mersin.

D. In denial of the Request for First Office Action, the Examining Attorney attached the following evidence:

22. One exhibit (*Exhibit no. 1*) is a screenshot from The Columbia Gazetteer of the World and it provides some basic demographic information about Mersin Turkey. This evidence is not probative and should be excluded, as the information contained on this screenshot has no reference point of comparison. The average American consumer of dairy and pastry products has not relation to this site would not be influenced by this cite to purchase product.

III. APPELLANTS RECORD OF EXHIBITS

1. Exhibit A – Wikipedia Page of Cyprus
2. Exhibit B- Wikipedia Page of Halloumi Cheese
3. Exhibit C – Wikipedia Page of Kunefe Cheese
4. Article on the History of Kunefe Cheese
5. Exhibits E-H – Travel Pages proving that Mersin is *not* a travel destination
6. Exhibit I – Mersin Wikipedia Page
7. Exhibit J-AO – Mersin goods sole by appellant in mostly English and Arabic
8. Exhibit AP – Article on the Turkish Population in America
9. Exhibit AQ-AT – Products using the Mersin cow logo
10. Exhibit AU – AY – Certificates showing production of some of Applicants products in Cyprus.
11. Exhibit AZ – United States Census information for those of Arabic decent in the United States.
12. Exhibit BA – Applicant’s affidavit

13. Exhibit BB-BF – Applicant’s proof of Registered Trademark in (1) Bahrain, (2) Kuwait, (3) Jordan, (4) Qatar, (5) Saudi Arabia

IV. ISSUES ON APPEAL

A. Statement of Issues on Appeal and Requested Action by the TTAB

1. Applicant appeals the Examining Attorneys’ refusal to extend protection to the United States/register the trademark, as depicted above, on the ground that the Mark is primarily geographically descriptive under Section 2(e)(2) of the Trademark Act. The issues on appeal before the Board are:

(i) whether the primary significance of the Mark is that of the name of a place generally known to the relevant purchasing public, and

(ii) whether the relevant American dairy and pastry purchaser would make the goods/place association.

V. ARGUMENT

A. Mersin’s Proposed Trademark is Not Geographically descriptive

“To refuse a registration as primarily geographically descriptive or as primarily geographically deceptively mis-descriptive, the PTO must show that: (1) the mark sought to be registered is the name of a place known generally to the public. (supporting factors are, e.g., a sizeable population of the location, or that members of the consuming public have ties to the location), and (2) the public would make a goods/place association, i.e., believe that the goods for which the mark is sought to be registered originate in that place (the PTO needs to make a prima facie case of likely association). *See In Re Societe Generale des Eaux Minerales de Vittel S.A.* 3 U.S.P.Q.2d 1450, 824 F.2d 957, 960 (Fed. Cir. 1987); *In re Brouwerij Nacional Balashi NV*, 80 U.S.P.Q.2d 1820, 1821 (TTAB 2006)

For both prongs (1) and (2), the relevant public is the purchasing public in the U.S. of these types of goods.” *In Re The New Bridge Cutlery Company*, Serial No. 79094236, available at 2013 WL 3001454 (T.T.A.B. Apr. 29, 2013) (“Board’s Decision”). Here, just as in the *Newbridge* case decided by the Federal Circuit, the evidence as a whole suggests that Mersin, Turkey, is not generally known; thus, to the relevant public, the mark MERSIN is not primarily geographically descriptive of the goods. There is no evidence to show the extent to which the relevant American consumer would be familiar with the locations listed in the gazetteer or any of the misguided recipes or travel guides cited by the examiner. Moreover, just as the court found that the fact that Newbridge, Ireland, is mentioned on some Internet websites does not show that it is a generally known location, as the Internet contains enormous amounts of information. Here, just as in *Newbridge*, just because the examiner could locate a handful of articles relating to travel, nuclear power plants, sports, recipes, and war; (which reference Mersin Turkey nearly entirely tangentially) there is nothing to show which consumers of dairy *if any* ever visited the websites or even knew of its existence. On this point, the Court stated: “[I]t is simply untenable that any information available on the internet should be considered known to the relevant public.” *Id.* at 14. Therefore the Examiner has failed to show a prima facie case of likely association. The Court further noted that its finding that Newbridge, Ireland, is not generally known is supported by the fact that certain maps and atlases do not include it, just as some of Applicants provided maps do not show Mersin on the map.

In this application, Applicant submits the Appellant’s mark, when applied to Appellant’s goods, is not geographically descriptive. Mersin is an obscure town unknown to most Americans and certainly not known by the American dairy and pastry consumer. The evidence presented by the Examiner does not prove the extent to which the relevant American consumer would be familiar with the location of Mersin, Turkey. Some food reviews of Turkish restaurants, blogs from residents of Mersin, Turkey, and some minor mentions on European and Middle Eastern travel sights does not prove that Mersin, Turkey is generally known to the American consumer of dairy and pastry products. Moreover, the fact that Mersin, Turkey, is

mentioned on Internet websites does not show that it is a generally known location, as the Internet contains enormous amounts of information.

To the American purchasing public, the primary significance of Mersin is not geographic because the city of Mersin, Turkey is relatively remote and obscure. Applicant's customers are the average purchasers of dairy and pastries, not the unusually well-traveled person or dairy and pastry aficionado. *See In re Societe Generale des Eaux Minerales de Vittel S.A.*, 3 U.S.P.Q. 2d 1450, 1452, 824 F.2d 957 (Fed. Cir. 1987). The examiner has produced evidence to show some knowledge of Mersin amongst travel aficionados, or perhaps even that it is a geographic locale known within Turkey, there is nothing in the record that establishes that the American Purchasing public, is aware of Mersin as a geographic locale, and to the American purchaser of dairy and pastry "Mersin" could just as easily be a "fanciful" term that is entirely made up.

More particularly, the refusal to register the present mark is improper based upon the Examining Attorney's perceived elevated knowledge of the purchasing public of Mersin, Turkey is just simply the wrong legal conclusion. When all of these factors are properly evaluated, the absence of evidence in the record to support the examiner's conclusion, combined with the Applicant's strong evidence supporting the conclusion that Mersin is a remote and obscure location requires that the refusal of registration is withdrawn and the mark be registered without a disclaimer of "Mersin".

B. GOODS/PLACE ASSOCIATION

i. The location of Mersin, Turkey is generally not known to the average consumer of dairy and pastry related products

The federal Circuit has ruled that the PTO needs only a "reasonable predicate for its conclusion that the public would be *likely* to make the particular goods/place association on which it relies." *Miracle Tuesday*, 695 F.3d at 1344 (quoting *In re Pacer Tech.*, 338 F.3d 1348, 1351 (Fed Cir. 2003) *Itself* quoting *Loew's*, 769 F.2d at 768)) (emphasis in *Pacer*) The Applicant can rebut that presumption by the PTO if the Applicant can demonstrate "that the

public would not actually not believe the goods derive from the geographic location identified by the mark.” *In re Save Venice New York, Inc.*, 259 F. 3d 1356, 1354 (Fed Cir. 2001). The Examining Attorney overlooks the fact that Mersin, Tukey bears little significance in comparison to the country of Turkey or other countries located in Europe and the Middle East. In the Examining Attorney’s Denial for Reconsideration, the Examining Attorney added a number of minuscule references to Mersin in an attempt to portray Mersin as a known Turkish Metropolis to the average American consumer. This is nothing more than a veiled attempt to maintain the position that the average American food consumer or purchaser of dairy and pastry goods will confuse the trademark of Mersin with Mersin, Turkey. Almost all of the articles reference Mersin only tangentially and none of them refer to the location and discuss the location at length. These food review articles of Turkish restaurants found on the internet does not raise the consciousness of the average American dairy and pasty consumer so as to elevate the meaning of Mersin to being primarily geographically significant.

The Denial of the Motion for Reconsideration also includes a travel article from Rick Steve’s Europe web page. The Examining Attorney posts a page designed for users to comment on other possible cities to visit while in Turkey. There is one reference for travelers to take an un-guided visit to the beaches of Mersin. The Turkish travel ministry does not even highlight Mersin as a popular tourist destination. The Examining Attorney’s assertions that Mersin is a tourist center or hub is wrong when the evidence provided by the Applicant rebuts this position to show that there is minuscule reference to Mersin since it is an obscure and unknown locale.

The Denial of the Motion for Reconsideration also includes an article published in 2011 called a “Mersin Merchant.” This article was posted to a web site called “If the Bag Fits.” There is no evidence to support this article was reproduced in any publication in the United States or referenced on any other internet web sites. This article would only be found if someone had actual knowledge of the article or performing an extremely broad key word search of the internet for “Mersin Merchants” or some other specific term. The Examining Attorney cannot support his position that an internet article highlighting a merchant in Mersin, Turkey would make

Mersin, Tukey generally known the average American consuming dairy and pastry and/or dairy and pastry-related products. This article certainly will not raise the consciousness of the average American consumer and make them aware of Mersin, Turkey as a geographic local.

The Denial for Motion for Reconsideration also contains a printout from Dimple Travel. The most popular travel site GLOBUS offers several guided tours to Turkey. There most popular trip the called “The Best of Turkey” and this trip does not even include the Mersin *Province* let alone the city. The most popular travel site for Americans looking to vacation in Turkey makes no reverence of Mersin. The Examining Attorney has attached a printout from a Turkish travel site utilized almost exclusively by Europeans and Middle Eastern people looking to travel to Turkey. The Examining Attorney cannot support this article would raise the consciousness of the average American consumer and make them aware of Mersin, Turkey as a geographic local.

ii. Term’s geographic significance is not its primary significance

“A mark is not primarily geographic where the geographic meaning is obscure, minor, remote, or not likely to be connected with the goods.” *In re Nantucket, Inc.*, 677 F.2d. 95, 99 (CCPA 1982). “The test is whether the Examining Attorney has submitted “evidence to establish a public associations of the goods with that place if, for example, there exists a genuine issue raised that the place is the mark is so obscure or remote that purchasers would fail to recognize the term as indicating the geographical source of the goods.” *See In re Societe General des Eau Minerales de Vittel S.A.*, 824 F.2d 957, 959 (Fed Cir. 1987). Put into present context, the Examining Attorney is required to prove that a relevant American consumer would in fact readily recognize Mersin as a place which would then indicate that Mersin food products comes from Mersin, Turkey.

The key decision on geographic obscurity came from *Vittel*. *Vittel* is the name of a town in France where water is bottled and then distributed. The water company sought to register the mark VITTEL for a line of cosmetics. The *Vittel* court analyzed the obscurity inquiry as follows:

There can be no doubt that the PTO has established that Vittel is in fact the name of a small town in the Voges [sic] mountain region of France where there is a resort with mineral springs – a sap – where the water is bottled and thence distributed somewhere, but how many people in this country know that? Certainly Vittel is remote and we deem evidence produced by the PTO insufficient to show that it is not obscure. We think the evidence is inadequate to show that the bulk of cosmetics purchasers, or even a significant portion of them,, would, upon seeing the work Vittel on a bottle is skin lotion or the like, conclude that it is a place name and that lotion came from there, rather than simply a trademark or trade name of a manufacturer like Chanel, Bourgois, or Vuitton.” *Id.* at 959.

Like *Vittel*, Mersin is a relatively small city in relation to the other much larger population centers of Turkey. As of end of 2014, the entire population of Turkey has an estimated population of 77,695,905. Mersin, is the tenth largest city in Turkey and the estimated population of Mersin at the end of 2014 was 915,703. The nine larger population centers comprise 40.33% of the entire population of Turkey. The Examining Attorney based his conclusion that Mersin was not obscure because of its population but that population must be weighted in proportion to the overall population of Turkey. Mersin is 01.16% of the overall population of Turkey. There is no evidence in the record submitted by the Examining Attorney that Americans of any ilk, let alone buyers of dairy and pastry products, have ever heard of the province (let alone the city) of Mersin. The examining attorney cannot even include any articles referencing any significance of Mersin to Turkey or the surrounding region other than the fact that the city has a sea port.

Virtually every document relied upon by the Examining Attorney about Mersin comes from Wikipedia, citizen blogs, or European/Middle East travel sites. The documents describe the history of the city, its population size, educational system and industries. There is nothing on the Wikipedia page that makes Mersin stand out as a major city in Turkey or the surrounding region. Further, there is nothing showing that the diary or pastry from Mersin is known either. The Examining Attorney’s assertions that many tourist travel to Mersin is also false as it is not listed

in many travel websites as can be seen in the evidence provided by the Applicant. In fact, the examiner has failed to identify even one place in Mersin that is visited by tourists or is a tourist destination.

iii. Not all the products are made in Mersin, Turkey.

The Appellants have submitted numerous pictures of products sold under the Mersin Brand but there is no evidence submitted by the appellants or the Examiner that the *all* products are produced in Mersin, Turkey. In fact, some of the products are produced in other countries and only packaged in Mersin, Turkey. In fact, some the cheese and dairy and pastry products are produced in Cypress and transported to Mersin, Turkey to be packaged and distributed.

C. The Examining Attorney failed to establish the “relevant public” as to who is purchasing the Mersin dairy and pastry related products.

Applicant’s customers are the average customers buying dairy and pastries in the United States. Even assuming *arguendo* the examiner’s assertion that the relevant public for purchasers of the “Mersin” mark is the extremely limited group of: purchasers of Turkish food goods, (as opposed to the Applicant’s proposed group of general purchasers of dairy and pastries) nothing in the record shows that purchasers of Turkish food goods are familiar with the various cities in Turkey. Pictures of the Applicant’s products submitted by both the examiner and the applicant, shows that a number of the labels are in a foreign languages, the most prominent language on many of them being Arabic, not Turkish. This is for good reason, the subset of Arabs *in the United States* are actually expected to be the largest purchasers of the applicant’s goods in the United States (see Applicant’s affidavit). The examiner is unnecessarily narrowing the relevant purchasing public of cheese and pastries based on languages shown on the packaging. The packaging should be taken as a whole to show the other languages on the packaging including Arabic.

However, if the Examiner is to the narrow purchasers of the goods to the extremely specific subset of purchasers of Turkish cheeses and pastry (in Applicant's case, cheeses and pastries that have Greek and Arab historical origins), the subset should be defined such that: the average person in the subset of the relevant purchasing public would likely be an Arab American purchasing Applicant's products at an ethnic supermarket. There are over 1.5 million Americans of Arab decent, nearly 15 times as many as there are Americans of Turkish decent. Therefore, the overwhelming majority of purchasers in the examiner's proposed subset of the "relevant purchasing public" would be an Arab. Even within this narrow subset, the average consumer of Turkish goods would not be familiar with the obscure and remote geographic location of Mersin, Turkey, and the examiner has provided no evidence to the contrary. Nor would the average consumer of Turkish food goods be familiar with Turkey or Turkish. Even if the hypothetical average consumer was an immigrant from one of Turkey's direct neighboring countries; Mersin, Turkey would still be an obscure and remote geographic location that has no geographic meaning or goods place association.

A case in which the applied for goods within the umbrella of cosmetics, and the court held:

In dealing with all these questions of the public's response to word symbols, we are dealing with the supposed reactions of a segment of the American Public, in this case the mill-run of cosmetics purchasers, not with the unusually well-traveled...

See Vittel, supra at 959

The Examining Attorney provided no evidence to define the "mill-run of dairy and pastry related food purchasers" whose reactions to the Mark might or might not stir a geographic recognition. The examiner only suggests that the subset are purchasers of Turkish food products. The TTAB has recognized the burden is on the Examining Attorney to prove a goods/place association "from the perspective of the relevant public for those goods and services", quoting from *In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305, 1309 (TTAB 2006).

The no evidence in the record that some Americans may have heard of Mersin, located in the Mersin province, country of Turkey. Other than a curious food purchaser typing Mersin into a search engine, the run-of-the-mill dairy and pastry purchaser would not make any geographical connection between the product and geographical location. In fact, the first item listed in a Google search of the term “Mersin” is not Mersin, Turkey but Mersin Food Products. In fact, the Examining Attorney could not produce any documents of probative value that would support his claims that the average American consumer of dairy and pastry products would be confuse Mersin’s products with Mersin, Turkey. Instead, the examiner attempts the “kitchen sink approach” and pulls some food critic stories for Turkish food, some blogs from Mersin residents, and some travel related sites and articles targeted to Europe and Middle Eastern travelers to support his contention that Mersin is as well-known as cities such as Detroit, Michigan or Houston, Texas. Cities such as Detroit, Michigan are known world-wide as the home of the largest automotive industry in the world. Mersin is not even an industrial hub in Turkey let alone the world in anything. When all of these factors are properly evaluated, there is no goods/place association by the relevant purchasing public, and a reversal of the refusal of registration is required.

D. Mersin Is An Obscure Location

The facts present in this case essentially mirror the facts in *In re Bavaria St. Paulie Brauerie Ag*, 222 USPQ 926, 928 (TTAB 1984), in which the terms “Jever” for beer was help no primarily geographically descriptive despite the fact the beer comes from Jever, a town with over 10,000 inhabitants in Germany. The TTAB held that evidence did not show that “the purchasing public in America would expect a Beer labeled ‘JEVAR’ to come from Jever, West Germany.”

There is no evidence that suggests that Mersin has been raised in the consciousness of the average American consumer so as to render it primarily geographically significant. See *In re Nambia Breweries Limited*, 2011 TTAB LEXIS 309 (TTAB Sept. 12, 2011) (hereinafter “NBL”) (“That is, it must be shown that relevant purchasers would readily recognize that the allegedly

geographically designation at issue (be it the mark as a whole or the relevant portion thereof) is in fact the name of a geographical place...” (emphasis added.) The record is devoid of any evidence that consumers in the U.S. would “readily recognize” Mersin to be the name of a geographical place. In fact, the evidence clearly shows that the primary significance of “Mersin” to the relevant American public (buyers of dairy and pastry related products) is non-existent because of the remoteness and obscurity of Mersin as a geographic location.

The fundamental flaw in the Examining Attorney’s decision is that consumers would recognize the term “Mersin” as the geographical source of the goods. There is no evidence in the record to support this incorrect conclusion. It is clear, that the geographic meaning is obscure, minor, remote, or not likely to be connected with the goods and the Examining Attorney’s denial should be reversed.

E. Mersin Already received Trademark Protection in Neighboring Countries

Mersin has already successfully applied and received trademark protection in the following countries: (1) Bahrain, (2) Kuwait, (3) Jordan, (4) Qatar, (5) Saudi Arabia (*See Registrations attached as Exhibit “I”*) and is currently under the final registration process in Egypt and the UAE. These countries have already determined that dairy product purchasers in the Middle East will not confuse the Mersin mark with Mersin, Turkey. These foreign registrations buttress that even in these countries with Arab consumers with a deeper knowledge of Turkey, there is still no goods/place association since Mersin Turkey is an obscure and remote geographic location. The average dairy and pastry and food purchaser in Bahrain, Kuwait, Jordan, Qatar, and Saudi Arabia (as opposed the average American consumer) would be far more likely to be familiar with the geographical location of Mersin, Turkey. But, yet the governing agencies of Bahrain, Kuwait, Jordan, Qatar, and Saudi Arabia concluded their consumers would not confuse the brand Mersin with Mersin, Turkey. If Mersin’s primary customers are not

confused, the likelihood of the average American consumer being confused is miniscule. Therefore, the USPTO should look for guidance from other governing bodies to aid and assist in the correct decision for this case and reverse the decision of Examining Attorney and register the Mersin trademark in the United States.

F. There is No Goods/Place Association and The USPTO Allowed Registration of Marks Including Other, Better Known Cities in Turkey Without a Disclaimer Requirement.

Applicant maintains that Mersin is not a well-known center for the manufacture of Cheese and Pastries. The reference to Mersin is incidental to the geographic location and primarily to the applicant, as the applicant has been using products branded with Mersin albeit with a mark slightly different than the applied for mark. Similar cases exist at the United States Patent and Trademark Office where the mark is registered despite the name sharing a name with much more well known cities in Turkey:

Mark	Goods/Services summary	Registration No
Istanbul	Cymbals and other percussive instruments	1633129
Istanbul Agop	Cymbals and other percussive instruments	4438827
Istanbul Mehmet	Cymbals and other percussive instruments	4413555
Antalya	Rugs	2566712
Ankara Cloth	Textiles	1605632
Denizli Handmade	Household and Kitchen Items	3790443
Denizli	Household and Kitchen	3606154

	Items	
Istanbul Eats	services for travel/food and computer software and books for travel/food.	4503926

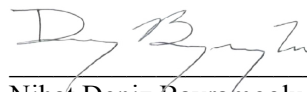
That the name of a geographic location (particularly ones as famous as Istanbul and Ankara) is incorporated into a mark does not *ipso facto* render a mark unregistrable. As with these other cases, the term Mersin does not signify a place with which an average relevant American consumer will be familiar.

CONCLUSION

For the reasons set forth herein, the opinion of the Examining Attorney should be reversed and Applicant/Appellant should be given registration of the Mersin mark.

Dated this 28th day of December 2015.

Respectfully submitted,



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